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RECORDATION NO. _____ Filed 1425

DEC 27 1984 - 11 35 AM

INTERSTATE COMMERCE COMMISSION

Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

No. _____
Date **DEC 27 1984**
Fee \$ 10.00
ICC Washington, D.C.
H-362A040

Dear Ms. Mergenovich:

Enclosed for recordation under the provisions of Section 11303 of Title 49 of the U.S. Code are the original and five counterparts of an Equipment Lease dated as of December 1, 1984. The Equipment Lease is a primary document.

A general description of the railroad rolling stock covered by the enclosed documents and intended for use related to interstate commerce is set forth in Schedule 1 attached to this letter and made a part hereof.

The names and addresses of the parties to the Equipment are as follows:

Lessor:	Pullman Leasing Company 200 South Michigan Avenue Chicago, Illinois 60604 Attention: Lease Administrator
Lessee:	The Dow Chemical Company c/o Dow Chemical U.S.A. 2020 Willard H. Dow Center Midland, Michigan 48640 Attention: Treasury Department

The undersigned is the Lessor mentioned in the enclosed documents and has knowledge of the matters set forth therein.

Please return the original and any extra copies of the Equipment Lease not needed by the Commission for recordation to Elizabeth L. Majers, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$10.00 covering the required recording fee.

A short summary of the enclosed primary document to appear in the Index is as follows:

CS. Kandler
County Clerk

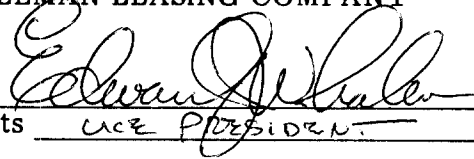
Equipment Lease between Pullman Leasing Company, as Lessor, 200 South Michigan Avenue, Chicago, Illinois 60604, Attention: Lease Administrator and The Dow Chemical Company, as Lessee, c/o Dow Chemical U.S.A., 2020 Willard H. Dow Center, Midland, Michigan 48640, Attention: Treasury Department covering railroad rolling stock.

Very truly yours,

PULLMAN LEASING COMPANY

By

Its


VICE PRESIDENT

Enclosures

14516

RECORDATION NO. Filed 1425

December 1, 1984

DEC 27 1984 - 11 45 AM

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE

Dated as of December 1, 1984

Between

PULLMAN LEASING COMPANY

LESSOR

And

THE DOW CHEMICAL COMPANY

LESSEE

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Attachments to Equipment Lease

Schedule A - Description of Items of Equipment
Schedule B - Certificate of Acceptance
Schedule C - Schedule of Casualty Value

EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of December 1, 1984 is between Pullman Leasing Company, a Delaware corporation (the "Lessor"), and The Dow Chemical Company, a Delaware corporation (the "Lessee");

RECITALS

A. Pursuant to an Acquisition Agreement dated as of December 1, 1984 (the "Acquisition Agreement"), The Dow Chemical Company has or will sell the Equipment referred to below to Mercantile Trust Company, National Association ("Mercantile") who will in turn lease such equipment to Lessor for Lessor to in turn sublease to Lessee.

B. The Lessor and Mercantile intend to enter into a Participation Agreement dated as of December 1, 1984 (the "Participation Agreement") with Bankers Life Company (the "Note Purchaser") providing for the commitment of the Note Purchaser which, together with funds provided by Mercantile, will permit Mercantile to obtain the funds necessary to purchase the equipment (collectively the "Equipment" or "Items of Equipment" and individually an "Item of Equipment" or "Item") described in Schedule A hereto (the Items of Equipment described in said Schedule A as hopper cars being hereinafter collectively called the "Hopper Cars" and individually called a "Hopper Car") and made a part hereof.

The Note (as defined in the "Participation Agreement") will be secured by an assignment of Mercantile's right, title and interest in and to the lease with Lessor and to the Equipment pursuant to a Security Agreement dated as of December 1, 1984 between Mercantile and the Note Purchaser, as well as by a collateral assignment of this Lease to the Note Purchaser.

SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

1.1. **Intent to Lease and Hire.** Upon delivery of each Item of Equipment by the manufacturer thereof identified in Schedule A hereto (hereinafter referred to individually as the "Manufacturer" and collectively as the "Manufacturers"), the Lessee shall lease and let and the Lessor shall hire to the Lessee such Item of Equipment for the rental and on and subject to the terms and conditions herein set forth.

1.2. **Inspection and Acceptance.** The Lessor will cause each Item of Equipment to be tendered to the Lessee at the place of delivery set forth in Schedule A hereto. Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same, and, if such Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor and Mercantile a Certificate of Acceptance (the "Certificate of Acceptance") in the form attached hereto as Schedule B with respect to such Item of Equipment; provided, however, that the Lessee shall not accept and the Lessor shall have no obligation to lease any Item of Equipment delivered after the Outside Delivery Date set forth in Schedule A hereto.

1.3. **Certificate of Acceptance.** The Lessee's execution and delivery of a Certificate of Acceptance with respect to each Item of Equipment pursuant to Section 1.2 hereof shall conclusively establish that, as between the Lessor and the Lessee, but without limiting or otherwise affecting the Lessee's or the Lessor's rights, if any, against the Manufacturer thereof, such Item of Equipment is acceptable to and accepted

by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Item of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to new railroad equipment of the character of the Equipment as of the date of this Lease. By execution and delivery of such Certificate of Acceptance, the Lessee represents that it has no knowledge of any such defect.

SECTION 2. RENTALS AND PAYMENT DATES.

2.1. Rent for Equipment. The Lessee agrees to pay the Lessor the following rent for each Item of Equipment:

(a) **Interim Rental.** For each Hopper Car, an amount per day (the "Interim Rental") equal to % of the Purchase Price as stated in Schedule A (the "Purchase Price") thereof for the period if any, from the Closing Date as stated in Schedule A (the "Closing Date") for such Item of Equipment to, but not including January 2, 1985 (the "Term Lease Commencement Date"); and

(b) **Fixed Rental.** For each Hopper Car, ten (10) semiannual installments of Fixed Rental (the "Fixed Rental"), payable in arrears, each amount equal to % of the Purchase Price followed by ten (10) semiannual installments of Fixed Rental payable in arrears, each amount equal to % of the Purchase Price, followed by ten (10) semiannual installments of Fixed Rental payable in arrears each amount equal to % of the Purchase Price followed by ten semiannual installments of Fixed Rental payable in arrears equal to % of the Purchase Price thereof.

2.2. Rent Payment Dates. The installment of Interim Rental for each Item of Equipment shall be due and payable on the Term Lease Commencement Date. The first installment of Fixed Rental for each Item of Equipment shall be due and payable six months following the Term Lease Commencement Date and the balance of said installments shall be payable at six month intervals thereafter until the expiration or earlier termination of this Lease. If any of the rent payment dates is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of Illinois are authorized or required to close.

2.3. Place and Manner of Rent Payment. The payments to be made by the Lessee under this Lease shall be made as follows:

(a) The installment of Interim Rental shall be paid to the Lessor by wire transfer to the principal office of the Lessor at the address provided for payments in Section 20.1 hereof; provided that in the event the Lessor shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, Lessee shall make such payment by wire transfer to the place

designated in such notice or as otherwise designated from time to time in writing by such assignee;

(b) The portion of any installment of Fixed Rental resulting from an increase in the amount thereof, if any, which the Lessee shall agree to pay to the Lessor pursuant to any rental adjustment arrangements under Section 2.4 shall be paid in full to the Lessor by wire transfer to the principal office of the Lessor at the address provided for payments in Section 20.1 hereof;

(c) Each installment of Fixed Rental shall be paid to the Lessor by wire transfer to the principal office of the Lessor at the address provided for payments in Section 20.1 hereof; provided that in the event the Lessor shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by wire transfer to the place designated in such notice or as otherwise designated from time to time in writing by such assignee;

(d) The entire amount of any payment of Casualty Value pursuant to Section 11 hereof shall be paid to the Lessor by a check drawn on a bank located in the continental United States identifying the same as a payment of Casualty Value relating to this Lease and forwarded to the Lessor in the manner provided for notice in Section 20.1 hereof; provided that in the event the Lessor shall notify the Lessee in writing that the right to receive payment of such Casualty Value shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by such check in the manner designated in such notice or as otherwise designated from time to time in writing by such assignee;

(e) The amount of any payment owing to the Lessor pursuant to Sections 6, 10.2, 11.1 (with respect to public liability insurance) and 20.2 hereof shall be made directly to the party to receive the same without regard to the assignment of this Lease pursuant to Section 16 hereof;

(f) The amount of any interest due in respect of the late payment of any rentals or other amounts pursuant to Section 19 hereof shall be paid to the party and in the manner herein provided to receive said rental or other amount; and

(g) All payments other than those above specified shall be made by the Lessee directly to the party to receive the same unless any such payment has previously been made by the Lessor or its assignee, in which case the Lessee shall reimburse the Lessor or its assignee, as the case may be, directly for such payment.

The Lessee agrees that it will make payments due hereunder by wire transfer where specified above no later than twelve p.m. (noon) Central Time of the office of the transferring bank on the due date of such payment of Federal or otherwise immediately available funds to the party to whom such payment is to be made, and where not so specified, such payment shall be made by check of the Lessee drawn on a bank located in the continental United States and mailed to the party to receive the same at

the address herein provided or such other address as the Lessee shall have been previously advised in writing.

2.4. Adjustment of Rent. Notwithstanding any other provision of this Lease, the Lessee and the Lessor agree that the Interim Rental and the Fixed Rental hereunder and the Casualty Value percentages set forth in Schedule C hereto will be adjusted in the event that:

(i) any assumption set forth below shall prove to be untrue:

(a) all Items of Equipment shall be accepted hereunder on or before December 28, 1984;

(b) the Term Lease Commencement Date shall be January 2, 1985;

(ii) if prior to January 1, 1986, any amendment to, or change in the Code or income tax regulations thereunder is enacted or adopted or any published administrative or judicial interpretations of the Code or such regulations are rendered and any of which having an effective date on or prior to the closing date for an Item of Equipment, the effect of which is to change the net after-tax rate of return or the net after-tax cash flow of the Lessor or Mercantile with respect to such Item based on the same assumptions and methods of calculation utilized by the Lessor or Mercantile in originally evaluating the transactions contemplated by this Lease.

Any such adjustment pursuant to clause (i) above shall be with respect to all Items of Equipment and pursuant to clause (ii) above shall be with respect to the subject Item of Equipment and in any such case shall be effective as of the first rent payment date following the event giving rise to such adjustment and shall be made in such a manner as will, in the Lessor's reasonable judgement, maintain the net after-tax rate of return and net after-tax cash flow that would have been realized by the Lessor or Mercantile had such event not occurred, based on the same assumptions and methods of calculation utilized by the Lessor or Mercantile in originally evaluating the transactions contemplated by this Lease. Notwithstanding the foregoing, with respect to this Section 2.4 the Interim Rental and the Fixed Rental and the Casualty Value percentages will never be less than those amounts and percentages required to enable the Lessor to satisfy in full its periodic obligations with respect to its Lease with Mercantile. The Lessor agrees to furnish the Lessee or an independent public accounting firm of recognized national standing selected by the Lessor such information as the Lessee may reasonably request in order to verify that the rental rate adjustment has been made in accordance with the terms of this Section 2.4. The Lessee agrees that any information furnished to it pursuant to this Section 2.4 shall be treated as confidential.

2.5. Net Lease. This Lease is a net lease and the Lessee's obligations to pay all Interim Rental and Fixed Rental and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected by reason of any defect in or damage to or loss or destruction of all or

requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment has been returned to the possession of the Lessor (for all purposes of this Lease any Item of Equipment shall not be deemed to have been returned to the Lessor's possession until all of the Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Items of Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any assignee pursuant to Section 16 hereof for any reason whatsoever.

SECTION 3. TERM OF THE LEASE AND CANCELLATION OPTIONS

3.1. Term of the Lease. The term of this Lease as to each item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Section 11, 14, and 18 hereof, shall terminate twenty years following the Term Lease Commencement Date provided for in Section 2.1 (a) hereof.

3.2. Cancellation Options. The Lessor hereby grants to the Lessee an option to cancel this Lease as to each Hopper Car upon the following dates: December 31, 1989, December 31, 1991, December 31, 1993, December 31, 1995, December 31, 1997, December 31, 1999 and December 31, 2001. This option may be exercised by the Lessee only by written notice to the Lessor given not less than 120 days nor more than 270 days before the earliest expiration cancellation date or any cancellation date for any Item of Equipment, but it may not be exercised if, at the time of exercise or the beginning of a Renewal Term, a Default has occurred and is continuing. Time is of the essence of this provision.

In the event the Lessee exercises its option to cancel, Lessee shall pay to Lessor as supplemental rental for each Hopper Car an amount equal to the present value of the difference between the Fair Rental Value of a 5820 cubic foot covered hopper car of Pullman design built during the same period for use in plastic pellet or resin service and the Fair Rental Value of each of the Hopper Cars for a period equal to the number of full or partial years from the cancellation date to December 31, 2004. The discount factor applied will be equal to eleven and one-half percent (11.5%). In no event shall the supplemental rental for each Hopper Car exceed the amount determined by multiplying the Purchase Price of the Hopper Car by the following percentages at the appropriate cancellation date.

December 31, 1989	§
December 31, 1991	§
December 31, 1993	§
December 31, 1995	§
December 31, 1997	§
December 31, 1999	§
December 31, 2001	§

In the event (i) that portion of the rentals relating only to the financing of the Hopper Cars obtained by Lessor from others for the period immediately subsequent to the cancellation date exceeds the rental rate the Lessee would have paid for a similar period or (ii) if the Fair Rental Value of the Hopper Cars exceeds the rental rate the Lessee would have paid for a similar period, then the Lessee will not be required to pay any supplemental rental.

Fair Rental Value for purposes of this Section shall mean and shall be determined on the basis of and shall be equal in amount to the rental value which could be obtained in an arm's length transaction between an informed and willing lessee/user (other than (a) a lessee currently in possession; or (b) a used equipment dealer) and an informed and willing lessor under no compulsion to lease.

In the event that the cars are leased to others and that portion of the rental which relates only to the financing of the Hopper Cars is below the rental Lessee would have paid for the period immediately subsequent to the cancellation date or if Lessor fails to lease the Hopper Cars to others during a period within one hundred eighty days (180) of the cancellation date, Lessor shall present evidence to Lessee documenting the current Fair Rental Value for the Pullman car and for the Hopper Cars along with a computation of amounts due the Lessor in accordance with this section.

In the event that Lessor and Lessee cannot agree on the respective Fair Rental Values, such Fair Rental Values are to be determined by an appraisal. Appraisal shall mean a procedure whereby two independent appraisers, neither of whom shall be a manufacturer of the Unit for which appraisal is required, one chosen by Lessee and one by Lessor, shall mutually agree upon the Fair Rental Values in question. Lessor or Lessee, as the case may be, shall deliver a written notice to the other party appointing its appraiser within 15 days after receipt from the other party of a written notice appointing the party's appraiser. If within 15 days after appointment of the two appraisers as described above, the two appraisers are unable to agree upon the Fair Rental Values in question, a third independent appraiser, who shall not be a manufacturer of such Unit, shall be chosen within five days thereafter by the mutual consent of such first two appraisers, or if such first two appraisers fail to agree upon the appointment of a third appraiser, such appointment shall be made by an authorized representative of the American Arbitration Association or any organization successor thereto. The decision of the third appraiser so appointed and chosen shall be given within 10 days after the selection of such third appraiser and, upon receipt of such decision, the Fair Rental Values shall be determined by averaging the respective decisions of all three appraisers, and thereafter such Fair Rental Values shall be binding and conclusive on the Lessor and the Lessee. The Lessor and the Lessee shall share equally the fees and expenses of the appraisers.

Upon termination of the Lease hereunder as to any Item(s) of Equipment, all further rental obligations end as to said Item(s) of Equipment.

SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

4.1. Retention of Title. Mercantile retains full legal title to the Equipment notwithstanding the delivery thereof to and possession and use thereof by Lessor and in turn the Lessee.

4.2. Duty to Number and Mark Equipment. The Lessee will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedule A hereto and within 120 days of the date hereof will label, keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Leased from Mercantile Trust Company, National Association, as Owner,
and subleased from Pullman Leasing Company subject to a Security Interest,
recorded with the I.C.C."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Mercantile to such Item of Equipment and the right of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been delivered to the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

4.3. Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under his Lease.

SECTION 5. DISCLAIMER OF WARRANTIES.

THE LESSEE LEASES THE EQUIPMENT, AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY EITHER THE LESSOR OR MERCANTILE, EACH EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF EXCEPT AS TO LESSOR, MERCANTILE OR ANY PARTY CLAIMING BY, THROUGH OR UNDER LESSOR OR MERCANTILE (D) THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (E) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole

cost and expense of the Lessee, whatever claims and rights the Lessor may have against the Manufacturer thereof or Mercantile, provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Item of Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Item of Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Item of Equipment. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Items of Equipment described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

SECTION 6. LESSEE'S INDEMNITY.

6.1. Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor and any assignee of the Lessor pursuant to Section 16 hereof and their respective successors and assigns from and against:

(a) any and all loss or damage to the Equipment, usual wear and tear excepted; and

(b) any claim, cause of action, damages, liability cost or expense (including, without limitation, reasonable counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to any Item of Equipment or any part thereof, including, without limitation, the construction, purchase, delivery, acceptance, rejection, ownership, sale, leasing, return or storage of any Item of Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessee or any indemnified party), (ii) relating to this Lease or the Acquisition Agreement, (iii) relating to the Security Agreement or the Note solely as they arise out of the Lease or Acquisition Agreement (iv) by reason or as the result of any act or omission (whether negligent or otherwise) of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (v) as a result of claims for patent, trademark or copyright infringements, or (vi) as a result of claims for negligence or strict liability in tort.

The indemnities and assumptions of liabilities set forth in this Section 6.1 do not guarantee to any party at any time a residual value in the Equipment.

6.2. Continuation of Indemnities and Assumptions. The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; **provided, however,** that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i), (ii), (iii) or (iv) of subsection (b) of Section 6.1

hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Section 13 or 15, as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability.

SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time) (the "Interchange Rules") with respect to the use and maintenance of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be altered, added, replaced or modified on any Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in Mercantile; **provided, however,** so long as no Event of Default shall have occurred and be continuing, that Lessee may, in good faith and by appropriate legal proceedings, at its own expense, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not in the opinion of the Lessor adversely affect the property rights, or interests of the Lessor, in the Equipment. Lessee may request Lessor to provide financing for such alterations, additions, replacements and/or modifications; however, Lessee acknowledges that Lessor has no obligations to provide such financing and its refusal to do so in no way alters Lessee's obligations hereunder.

SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense and in a manner no less thorough and complete than is the prudent industry standard for Class I line-haul railroads, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange in accordance with the Interchange Rules and for immediate regular use by a Class I line-haul railroad. Except as required by the provisions of Section 7 hereof, the Lessee shall not modify any Item of Equipment; **provided, however,** so long as no Event of Default shall have occurred and be continuing, that Lessee may, in good faith and by appropriate legal proceedings, at its own expense, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not in the opinion of the Lessor adversely affect the property rights, or interests of the Lessor in the Equipment. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair under this Section 8 shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in Mercantile without cost or expense to Mercantile. The Lessee shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing material damage to such Item of Equipment. Title to any such readily removable additions or improvements shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to

any Item of Equipment, the Lessee agrees that it will, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing material damage to such Item of Equipment.

SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon any Item of Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease and any other liens or charges which arise by virtue of claims against, through or under any party other than the Lessor and/or Mercantile, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor or the security interest or other rights of any assignee in and to the Equipment. The Lessee's obligations under this Section 9 shall survive the termination of this Lease.

SECTION 10. FILING; PAYMENT OF STATE AND LOCAL TAXES.

10.1. Filing. Prior to the delivery and acceptance of the first Item of Equipment hereunder, the Lessor will cause this Lease to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act and in such other places within or without the United States as the Lessor or Mercantile may reasonably request and will furnish the proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of protecting the Mercantile's title to any Item of Equipment to the satisfaction of the Lessor, Mercantile's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor proof of such filings. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and rerecording or depositing and redepositing of any such instruments or incident to the taking of such action.

10.2. Payment of State and Local Taxes. The Lessee shall defend, indemnify and save harmless the Lessor, Mercantile and any assignee of either pursuant to Section 16 hereof and their respective successors and assigns (collectively, the "Indemnities", and individually, an "Indemnatee") from and against, and as between the Lessee and each Indemnatee the Lessee hereby assumes liability with respect to, all fees (including, without limitation, license fees and registration fees), taxes (including, without limitation, income, gross receipts, franchise, sales, use, value added, property and stamp taxes), assessments, levies, imposts, duties, charges or withholdings of any nature whatsoever, together with any and all penalties, additions to tax, fines or interest thereon imposed against any of the Indemnitees, any Item of Equipment or the Lessee, upon, arising from or relating to (i) any Item of Equipment, (ii) the construction, purchase, delivery, ownership, acceptance, rejection, possession, improvement, use, operation, leasing, condition, maintenance, repair, sale, return, storage, abandonment or other application or disposition of any Item, (iii) the

rental payments, receipts or earnings arising from any Item of Equipment or payable pursuant to this Lease, or (iv) this Lease otherwise with respect to or in connection with the transactions contemplated thereby (herein called "Impositions"); provided that Impositions shall not include as to each respective Indemnitee: (i) United States federal income taxes and, to the extent that any respective Indemnitee receives credit therefor (at any time, either in a current taxable year, or by way of carryback or carryover to any other taxable year) against its United States federal income tax liability, any foreign income or withholding tax of such Indemnitee, payable by any respective Indemnitee in consequence of the receipt of payments provided herein; and (ii) the aggregate of all income and franchise taxes measured by net income based on such receipts which are payable to the state and city in which such Indemnitee has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided. The Lessee agrees to pay, on demand, any and all Impositions. The Lessee will also pay promptly all Impositions which may be imposed upon any Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon any Indemnitee solely by reason of its interest with respect thereto and will keep at all times all and every part of such Item of Equipment free and clear of all Impositions which might in any way affect the interest of any Indemnitee therein or result in a lien upon any such Item of Equipment; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the reasonable opinion of the Indemnitee, adversely affect the interest of any Indemnitee hereunder. If any Impositions shall have been charged or levied against any Indemnitee directly and paid by such Indemnitee after such Indemnitee shall have given written notice thereof to the Lessee and the same shall have remained unpaid for a period of ten business days thereafter, the Lessee shall reimburse such Indemnitee on presentation of invoice therefor. Prior to making such payment, such Indemnitee shall promptly notify the Lessee of the Impositions charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such Impositions, at its sole expense.

In the event any reports with respect to Impositions are required to be made on the basis of individual Items of Equipment, the Lessee will either prepare and file such reports in such manner as to show as required the interests of each Indemnitee in such Items of Equipment or, if it shall not be permitted to file the same, it will notify each Indemnitee of such reporting requirements, prepare such reports in such manner as shall be satisfactory to each Indemnitee and deliver the same to each Indemnitee within a reasonable period prior to the date the same is to be filed.

In the event that, during the continuance of this Lease, any Imposition accrues or becomes payable or is levied or assessed (or is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse, pursuant to this Section 10.2, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE.

11.1. Insurance. The Lessee agrees that it will at all times during the term of this Lease and during any storage period hereunder and at its own cost and expense keep each Item of Equipment insured against loss by fire, collision, derailment and explosion and with extended coverage and against such other risks and in such

amounts as are customarily maintained by the Lessee with respect to similar equipment which it owns or leases, and will maintain general public liability insurance with respect to the Equipment against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than \$50,000,000 arising out of any single occurrence or during any consecutive 12 month period. The Lessee may, at his option, self-assume the risk of loss or damage to the equipment. All such liability insurance shall protect the Lessor and Mercantile, and the Lessee in respect of risks arising out of the condition, maintenance, use, ownership and operation of the Equipment and each such party shall be an additional insured under any liability policy. All policies of insurance maintained pursuant to this Section shall provide that 30 days prior written notice of cancellation shall be given to the Lessor. The Lessee shall be deemed to have complied with the requirement to maintain insurance as above set forth if it shall maintain or cause to be maintained a blanket policy covering all of the Items of Equipment then subject to this Lease together with all of the rolling stock of the Lessee, so long as such blanket policy shall otherwise comply with the provisions of this Section 11.1. The Lessee shall, from time to time as required to evidence coverage and in any event at least annually, furnish the Lessor with certificates or other satisfactory evidence of maintenance of the insurance required hereunder from a reputable insurance agent not affiliated with the Lessee showing that the insurance maintained by or on behalf of the Lessee complies with the requirements of this Section, and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal prior to the expiration date of the original policy or policies.

Without limiting any of the obligations of the Lessee set forth in this Section 11.1, the Lessor shall have the right to carry insurance against loss or damage to the Equipment for its own benefit in excess of the amount required to be maintained by the Lessee pursuant to this Section 11.1.

11.2. Duty of Lessee to Notify Lessor. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged or worn out, or permanently returned to the Manufacturer pursuant to any patent or warranty indemnity during the term of this Lease or thereafter while such Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease for a stated period which exceeds the then remaining term of this Lease (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor and any assignee of the Lessor pursuant to Section 16 hereof in regard thereto and shall pay the Casualty Value (as defined in Section 11.6 hereof) of such Item in accordance with the terms of Section 11.3 hereof.

11.3. Sum payable for Casualty Loss. The Lessee, on the next succeeding rent payment date following its notice of a Casualty Occurrence with respect to any Item or Items of Equipment, shall pay to the Lessor the Interim or Fixed Rental installment due on such payment date for such Item of Equipment plus any rentals or other sums due on or prior to such date then remaining unpaid plus a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment.

11.4. Rent Termination. Upon (and not until) payment of all sums required to be paid pursuant to Section 11.3 hereof in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing

subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

11.5. Disposition of Equipment. The Lessee shall, as agent for the Lessor and Mercantile, dispose of such Item or Items of Equipment having suffered a Casualty Occurrence as soon as it is able to do so for the fair market value thereof. Any such disposition shall be on an "as-is", "where-is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of, so long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default shall have occurred and be continuing, the Lessee may retain all amounts arising from such disposition plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, to the Lessor. In disposing of such Item of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such Item of Equipment.

11.6. Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the Purchase Price of such Item of Equipment set forth in the Schedule of Casualty Value attached hereto as Schedule C opposite such date of payment.

11.7. Risk of Loss. The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value and all rental installments and other sums due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.8. Eminent Domain. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay all installments of rental and other sums shall continue for the duration of such requisitioning or taking. So long as no Event of Default, or event which with the lapse of time or giving of notice, or both, shall have occurred and be continuing, the Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

SECTION 12. ANNUAL REPORTS.

12.1. Duty of Lessee to Furnish. On or before the first May 1 which occurs more than six months following the date of this Lease, the Lessee will furnish to the Lessor and any assignee of the Lessor pursuant to Section 16 hereof an accurate statement, as of the preceding December 31 (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during

the 12 months ending on such December 31 (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

12.2. Lessor's Inspection Rights. The Lessor, Mercantile and any assignee of the Lessor pursuant to Section 16 hereof each shall have the right, at their respective sole cost and expense, by their respective authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such time as shall be reasonably necessary to confirm thereto the existence and proper maintenance of the Equipment during the continuance of this Lease but only after appropriate prior written notice to Lessee and only to the extent such inspection is consistent with Lessee's safety, security and confidentiality procedures.

SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks as the Lessee may select, or permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding 30 days and at the end of such 30 days deliver such Item of Equipment to Lessor at such location. All movement and storage of each such Item is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same; **provided, however,** that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment. All amounts earned in respect of the Equipment after the date of expiration of this Lease, but not exceeding the rental, per diem as determined below, or other similar charge for equipment received therefor, shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 30 days after the expiration of this Lease, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the higher of (i) an amount equal to % of the Purchaser Price of such Item of Equipment, or (ii) the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item for each such day exceeds the amount, if any, received by the Lessor (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment.

SECTION 14. DEFAULT.

14.1. Events of Default. Any of the following events shall constitute an Event of Default hereunder:

(a) Default shall be made in the payment of any part of the rental or Casualty Value provided in Section 2 or 11 hereof and such default shall continue for five days after written notice to Lessee of such non payment;

(b) The Lessee shall make or permit any assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof not permitted by this Lease;

(c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding the same to be remedied;

(d) Any representation or warranty made by the Lessee herein or in any statement or certificate furnished to the Lessor pursuant to or in connection with this Lease is untrue in any material respect as of the date of issuance or making thereof;

(e) The Lessee becomes insolvent or fails generally to pay its debts as such debts become due, or causes an order for relief to be entered against the Lessee or acquiesces in the entering of such an order against it, under applicable federal or state bankruptcy law, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a custodian, trustee or receiver for the Lessee or for the major part of its property;

(f) A custodian, trustee or receiver is appointed for the Lessee or for the major part of its property and is not discharged within 60 days after such appointment; or

(g) Any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of either of them in connection with any such proceeding in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier.

14.2. Remedies. If any Event of Default has occurred and is continuing, the Lessor or, in the event this Lease shall be assigned to an assignee pursuant to Section 16 hereof, such assignee, at its option, may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable attorneys' fees; and/or

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of the Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use such Items for any purpose whatever, but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Item of Equipment which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then Fair Rental Value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of such Item during such period, such present worth to be computed in each case on a basis of an 8% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess if any of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the amount the Lessor reasonably estimates to be the Fair Market Value thereof at such time; **provided, however,** that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (i) with respect thereto may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the net proceeds of such sale, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

For purposes of Section 14.2 above, the Fair Rental Value and Fair Market Value for any Item of Equipment shall be determined in the manner provided for appraisal arrangements specified in Section 18 hereof; provided that any sale in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Market Value of such Item and any rental in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Rental Value of such Item.

14.3. Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

14.4. Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

14.5. Notice of Event of Default. The Lessee also agrees to furnish to the Lessor, promptly upon any authorized representative becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 14.5 an "authorized representative" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any authorized representative of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1. Lessee's Duty to Return. If the Lessor or any assignee of the Lessor pursuant to Section 16 hereof shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith place such Equipment upon such storage tracks as the Lessee may select;

(b) Permit the Lessor to store such Equipment on such tracks, for a period not to exceed 90 days, without charge for insurance, rent or storage until such Equipment has been sold, leased or otherwise disposed of by the Lessor and during such period of storage the Lessee shall continue to maintain all insurance required by Section 11.1 hereof; and

(c) Deliver such Equipment to Lessor at such location at the end of such 90 day period.

All amounts earned in respect of the Equipment after the date of termination of this Lease, but not exceeding the rental, per diem as determined below, or other similar charge for equipment received therefor, shall belong to the Lessor or in the event this Lease has been assigned pursuant to Section 16 hereof, to such assignee, and, if received by the Lessee, shall be promptly turned over to the Lessor, or in the case of such assignment, to such assignee. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 30 days after the termination of this Lease, the Lessee shall, in addition, pay to the Lessor or, in the case of such assignment, to such assignee for each day thereafter an amount equal to the amount, if any, by which the higher of (i) an amount equal to $\frac{1}{2}$ of the Purchase Price of such Item of Equipment, or (ii) the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item of Equipment for each such day exceeds the amount, if any, received by the Lessor or such assignee (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence.

15.2. Specific Performance. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

15.3. Lessor Appointed Lessee's Agent. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to the Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item.

SECTION 16. ASSIGNMENTS BY LESSOR.

This lease and all rent and all other sums due or to become due hereunder may be assigned in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon notice to the Lessee of any such assignment, the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in Mercantile's title or Lessor's lease with Mercantile, or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of such assignee,

the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, (ii) said assignee shall, if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of said assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor (except those rights, privileges and remedies relating to amounts payable to the Lessor pursuant to Sections 6, 10.2, 11.1 (with respect to public liability insurance) and 20.2 hereof which shall remain enforceable by the Lessor), but if no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, said assignee and the Lessor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and (iii) all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor.

SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

17.1. Lessee's Rights to the Equipment. So long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

Notwithstanding any provision of this Lease to the contrary, Lessee acknowledges that in the event Lessor is in Default with respect to its lease with Mercantile, then, in such event, the rights of Mercantile, or its assignee, under its lease with Lessor, including the right to take possession of the Equipment, shall in all aspects supersede and override the rights of Lessee under this Lease.

17.2. Use and Possession in Railroad Operations. (a) So long as the Lessee shall not be in default under this Lease, the Lessee shall, in accordance with the terms of this Lease, be entitled to the possession of the Equipment and to the use thereof upon lines of railroad located in the United States in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease. The Lessee shall at no time throughout the term of this Lease assign or permit the assignment of any Item of Equipment to service (including, without limitation, the regular operation or maintenance thereof) outside the continental United States, and the Lessee agrees that the use of the Equipment outside the continental United States shall be de minimus. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligation hereunder which shall be and remain those of a principal and not a surety.

(b) So long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall, in accordance with the terms of this lease, be entitled to sublease the Items of Equipment to (i) common carrier railroads

pursuant to the Lessee's car usage agreements entered into by the Lessee in the ordinary course of its business, and (ii) to such other responsible sublessees as Lessor may choose on a short term (six months or less) basis, and (iii) such other sublessees under such terms of sublease as shall have been approved in writing by the Lessor (such usage agreements and such other subleases being referred to herein as the "Permitted Subleases"); **provided, however,** that any such Permitted Sublease and the rights and interest of any sublessee thereunder shall in all events be subject and subordinate to this Lease and the rights and interests of the Lessor and its respective successors and assigns hereunder, and shall confirm such subordination by a provision therein satisfactory to the Lessor; and such Permitted Sublease shall in all cases be for a term expiring not later than the end of the then current term of this Lease. So long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an event of Default, shall have occurred and be continuing, each Item of Equipment may, under the terms of this Lease and pursuant to any such Permitted Sublease, be used upon connecting carriers in the usual interchange of traffic, but only upon and subject to all of the terms and conditions of this Lease.

17.3. Merger, Consolidation or Acquisition of Lessee. Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation into or with which the Lessee shall have become merged or consolidated or which shall have acquired all or substantially all of the property of the Lessee, provided that such assignees, successors or transferees shall have duly assumed in writing the obligations of the Lessee hereunder and that they will not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Lease and that such merger or consolidation or acquisition of properties shall not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a guarantor.

SECTION 18. PURCHASE OPTION; RENEWAL OPTIONS.

18.1. Purchase Option. Provided that no Event of Default or any event which with the lapse of time of the giving of notice, or both, would constitute an Event of Default, the Lessee shall have the following options to purchase the Equipment.

(a) Lessee may exercise either of the two mutually exclusive options set forth hereafter with respect to the Hopper Cars:

(i) An option to purchase any one or more individual Hopper Cars, up to all of the Hopper Cars, for cash upon the expiration of the twenty year primary term or any renewal term for its Fair Market Value at the time of Purchase. This option may be exercised by the Lessee only by written notice to the Lessor given not less than 150 days nor more than 270 days before the expiration of the twenty year primary term or any renewal term, but it may not be exercised if, at the time of exercise, an Event of Default has occurred and is continuing. If this option is exercised, the Lessor shall sell and the Lessee shall purchase the selected Hopper Car(s) on the last day of the twenty year primary term or the renewal term, as the case may be. Upon payment by the Lessee of the purchase price for all of the selected Hopper Cars and all rent in respect of the twenty year primary term or

renewal term remaining due but unpaid, the Lessor shall execute and deliver to or at the direction of the Lessee a bill of sale for the selected Hopper Cars on an "as-is", "where-is" basis and without any representation or warrant by the Lessor, except for a warranty that each selected Hopper Car is free and clear of all liens, claims and encumbrances created by contract by the Lessor or arising out of claims against the Lessor other than claims against which the Lessee has agreed to indemnify the Lessor. The Lessee shall pay or cause to be paid (i) all sales and use taxes payable in connection with each sale and (ii) all unpaid property taxes accrued with respect to each selected Hopper Car attributable to the period prior to the sale. Time is of the essence of this provision; or,

(ii) An option to purchase all of the Hopper Cars, i.e., each and every one, for an amount equal to % of the Purchase Price, which the parties believe represents the Fair Market Value of all of the Hopper Cars, otherwise on the same terms and conditions set forth in (i) above.

18.2. Renewal Options. Provided that no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall have the following renewal options:

(a) The Lessee shall have the option to renew and extend this Lease as to any or all of the Hopper Cars then leased hereunder for two additional renewal terms of five years each upon and subject to the terms and conditions herein contained for the original term of this Lease; provided that the Fixed Rental payable for and during any such renewal term shall be an amount equal to the Fair Rental Value (as hereinafter defined) of such Hopper Cars and that the Casualty Value payable for and during any such renewal term in respect of any Item of Equipment suffering a Casualty Occurrence during such term shall be an amount equal to the higher of (i) the Fair Market Value of such Item of Equipment as of the beginning of such renewal term, or (ii) an amount equal to 20% of the Purchase Price of such Hopper Cars. Each renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice of any such election 210 days prior to the commencement of any renewal term provided for in this Section 18.2; and

(b) The Fair Rental Value or Fair Market Value, as the case may be, of the Hopper Cars shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee or buyer, as the case may be (other than a lessee or buyer, as the case may be, currently in possession) and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell, as the case may be. If on or before 90 days prior to the date of commencement of the renewal term elected by the Lessee, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value or the Fair Market Value of such Hopper Cars, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean any independent appraiser mutually agreed upon by the Lessor and the Lessee. If no such mutual agreement is reached within 15 days after the beginning of such 90-day period, two independent appraisers, one chosen by the Lessor and one chosen by the Lessee, or, if such appraisers cannot agree on the amount

of such value within 60 days prior to the date of commencement of the renewal term elected by the Lessee, an independent appraiser to be chosen by the American Arbitration Association promptly thereafter. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne equally by Lessor and Lessee.

18.3. Delivery of Equipment. Unless the Lessee has elected to purchase the Hopper Cars then leased hereunder or to renew this Lease in respect of such Hopper Cars as provided in this Section 18, all of such Hopper Cars shall be returned to the Lessor at the end of the original term, or the then current renewal term, as the case may be, in accordance with Section 13 hereof.

SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNT PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding any nonpayment of rent due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount equal to 14% per annum (or the lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. MISCELLANEOUS.

20.1. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class, postage prepaid, addressed as follows:

If to the Lessor:

Pullman Leasing Company
200 South Michigan Avenue
Chicago, Illinois 60604
Attention: Lease Administrator

By bank wire transfer of Federal Funds
together with an advice setting forth the
date of the Lease and the name of the
Lessee to:

Continental Illinois National Bank
& Trust Company of Chicago
231 South LaSalle Street
Chicago, Illinois 60693
for credit to Pullman Leasing Company
Account No. 76-40552

If to the Lessee:

Dow Chemical U.S.A.
2020 Willard H. Dow Center
Midland, Michigan 48640
Attention: Treasury Department

or addressed to any such party at such other address as such party shall hereafter furnish to such other party in writing.

20.2. Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor or, in the case of an assignment by the Lessor pursuant to Section 16 hereof, the assignee thereunder may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance. Any payment so made by any such party and all cost and expense (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the party making the same upon demand as additional rent hereunder, with interest at the rate of 14% per annum.

20.3. Execution in Counterparts. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

20.4. Law Governing. This Lease shall be construed in accordance with the laws of the State of Illinois; **provided, however,** that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

20.5. Headings and Table of Contents. All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

20.6. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be as to such jurisdiction ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers or authorized representatives thereunder duly authorized and the corporate seals to be hereto affixed as of the day and year first above written.

(CORPORATE SEAL)

ATTEST:

David R. Wood
Assistant Secretary

PULLMAN LEASING COMPANY

By

Edward J. Walsh
Its VICE PRESIDENT

(CORPORATE SEAL)

ATTEST:

Lis J. Kierlein
Assistant Secretary

THE DOW CHEMICAL COMPANY

By

Thomas J. Warrick
Its Authorized Representative

STATE OF MICHIGAN)
)
COUNTY OF MIDLAND) SS

On this 21st day of December, 1984, before me personally appeared Thomas J. Brennan, to me personally known, who being by me duly sworn, says that he is the Authorized Rep. of The Dow Chemical Company that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Constance M. Morr
Notary Public
CONSTANCE M. MORR

(NOTARIAL SEAL)

My commission expires:
May 28, 1985

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

On this 26 day of December, 1984, before me personally appeared Edward J. Whalen, to me personally known, who being by me duly sworn, says that he is the VIC PRESIDENT of Pennaco Leasing Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Barbara J. Nowiak
Notary Public

(NOTARIAL SEAL)

My commission expires: Dec. 27, 1985

DESCRIPTION OF ITEMS OF EQUIPMENT

Manufacturer of Equipment:	Richmond Tank Car Company
Description and Mark and Number of Items of Equipment:	Two Hundred 5800 Cubic Foot Hopper Cars equipped with Pneumatic Outlet Gates marked and numbered DOWX 20000 to DOWX 20199, both inclusive.
Average Base Purchase Price of Equipment:	\$50,574.08 for each Hopper Car
Maximum Aggregate Purchase Price of Equipment:	\$10,114,816.00 for the Hopper Cars
Place of Delivery:	Freeport, Texas
Outside Delivery Date:	December 28, 1984
Closing Date:	On or before December 28, 1984

SCHEDULE A
(to Equipment Lease)

**CERTIFICATE OF ACCEPTANCE
UNDER EQUIPMENT LEASE**

To: Mercantile Trust Company, National Association
Pullman Leasing Company

I, a duly appointed and authorized representative of Pullman Leasing Company under the Equipment Lease dated as of December 1, 1984 between the Mercantile Trust Company, National Association and Pullman Leasing Company and a duly appointed and qualified representative of The Dow Chemical Company under the Equipment Lease dated as of December 1, 1984 between The Dow Chemical Company and Pullman Leasing Company do hereby certify that I have inspected, received, approved and accepted delivery under the Lease of the following Items of Equipment:

TYPE OF EQUIPMENT:

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Items of Equipment are in good order and condition, and appear to conform to the specifications applicable thereto, that the Lessee has no knowledge of any defect in any of the foregoing Items of Equipment with respect to design, manufacture, condition or in any other respect, and that each Item has been or will be within 120 days labeled by means of a plate or a stencil printed in contrasting colors upon each side of the Item in letters not less than one inch in height as follows:

"Leased from Mercantile Trust Company, National Association,
as owner, and subleased from Pullman Leasing Company subject
to a Security Interest recorded with the I.C.C."

The execution of this Certificate will in no way relieve or decrease the responsibility of the manufacturer for any warranties it has made with respect to the Equipment.

Dated: _____, 19__

Inspector and Authorized Representative
of Pullman Leasing Company

Inspector and Authorized Representative
of The Dow Chemical Company

SCHEDULE B
(to Equipment Lease)

SCHEDULE OF CASUALTY VALUE

The Casualty Value for an Item of Equipment payable on the Term Lease Commencement Date or any Fixed Rental Payment date thereafter shall mean an amount equal to the percent of the Purchase Price of such Item set forth opposite such date in the following schedule:

Hopper Cars

Term Lease Commencement Date
or Fixed Rental Payment Date
on which Casualty Value is Paid

Percentage of Purchase
Price of each Hopper Car
Payable as Casualty Value

Term Lease Commencement Date

July 2, 1985
January 2, 1986
July 2, 1986
January 2, 1987
July 2, 1987
January 2, 1988
July 2, 1988
January 2, 1989
July 2, 1989
January 2, 1990
July 2, 1990
January 2, 1991
July 2, 1991
January 2, 1992
July 2, 1992
January 2, 1993
July 2, 1993
January 2, 1994
July 2, 1994
January 2, 1995
July 2, 1995
January 2, 1996
July 2, 1996
January 2, 1997
July 2, 1997
January 2, 1998
July 2, 1998
January 2, 1999
July 2, 1999
January 2, 2000
July 2, 2000
January 2, 2001
July 2, 2001
January 2, 2002
July 2, 2002
January 2, 2003
July 2, 2003
January 2, 2004
July 2, 2004
January 2, 2005

RECORDATION NO.

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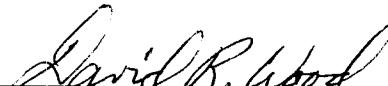
INTERSTATE COMMERCE COMMISSION

PULLMAN LEASING COMPANY

CERTIFICATE OF ASSISTANT SECRETARY

I, David R. Wood, DO HEREBY CERTIFY that I am an Assistant Secretary of PULLMAN LEASING COMPANY, a Delaware corporation, and that attached hereto is a true and correct copy of the Equipment Lease dated as of December 1, 1984 between Pullman Leasing Company and The Dow Chemical Company.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Corporation as of the 27th day of December, 1984.


Assistant Secretary